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July 16, 2007

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 7, 2007

Case Number: TSO-0474

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization<sup>1</sup> under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

**I. Background**

The individual has held a DOE security clearance for many years. On June 13, 2006, the individual reported to the LSO that he was voluntarily entering a 30-day inpatient alcohol treatment program. Upon his discharge from the treatment program, the LSO conducted a personnel security interview (PSI) with the individual to explore the extent of the individual's alcohol use and the nature of his alcohol treatment. After the PSI, the LSO referred the individual to a DOE psychiatrist for a forensic psychiatric examination. The DOE psychiatrist examined the individual in October 2006 and memorialized his findings in a report (Psychiatric Report or Exhibit 14). In the Psychiatric Report, the DOE psychiatrist concluded that the individual suffers from a mental condition, Alcohol Dependence, in Early Full Remission. The DOE psychiatrist further opined that Alcohol Dependence is an illness which causes, or may cause, a defect in the individual's judgment or reliability. At the time of the 2006 examination, the DOE psychiatrist did not believe that the individual was either rehabilitated or reformed from his Alcohol Dependence.

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<sup>1</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In January 2007, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j). (hereinafter referred to as Criteria H and J respectively).<sup>2</sup>

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. On March 8, 2007, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing in the case within the regulatory time frame prescribed by the Part 710 regulations. At the hearing, nine witnesses testified. The LSO called one witness and the individual presented his own testimony and that of seven witnesses. In addition to the testimonial evidence, the LSO submitted 28 exhibits into the record; the individual tendered 13 exhibits.

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting him an access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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<sup>2</sup> Criterion H relates to information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j).

## **B. Basis for the Hearing Officer's Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

## **III. The Notification Letter and the Security Concern at Issue**

As previously noted, the LSO cites two criteria as the bases for suspending the individual's security clearance, Criteria J and H. To support Criterion H, the LSO relies on the DOE psychiatrist's opinion that the individual suffers from Alcohol Dependence, in Early Full Remission, a mental condition, which causes, or may cause, a defect in the individual's judgment or reliability. The LSO also relies on the DOE psychiatrist's opinion to support Criterion J in the case, and the following information: (1) the individual received inpatient alcohol treatment in June and July 2006; (2) the individual told the LSO and the DOE psychiatrist that his alcohol consumption increased beginning in 2001 to the point where he was consuming 10-12 beers every evening; (3) the individual admitted to the LSO and the DOE psychiatrist that he is an alcoholic and that alcohol played a role in his 1996 divorce; (4) the individual was arrested in 1993 for Driving While Intoxicated (DWI); (5) the individual admitted to the LSO that prior to his 1993 DUI arrest he drove while intoxicated once per month; (6) doctors told the individual that his liver enzymes were elevated that that he should stop consuming alcohol; and (7) the individual admitted to the LSO that he went to work under the influence of alcohol in 2001.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. First, a mental condition such as Alcohol Dependence can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

## **IV. Findings of Fact**

The individual started consuming alcohol at age 18 and continued to drink for the next 30 years. Exhibit (Ex.) 14 at 5. In 1993, the individual was arrested and charged with DWI after he was involved in an auto accident. Ex. 19. He claimed that after the 1993 DWI arrest, he only drank at home. Ex. 27 at 26. By 1998 the individual often consumed two six-packs of beer each day. In 2001, the individual's 20-year old son was diagnosed with

cancer. Ex. 14 at 5. To cope with his son's illness, the individual increased his alcohol consumption. *Id.* The individual admitted that during his son's illness, he went to work once or twice with alcohol on his breath. Ex. 27 at 38. When the individual's son died in September 2001, the individual had increased his alcohol use to three six-packs of beers a day. Ex. 14 at 5. He continued consuming alcohol at these levels until June 2006. Transcript of Hearing (Tr.) at 96. Sometime in 2004 or 2005, the individual's physician advised him to reduce his alcohol consumption because the individual's liver enzymes were elevated. Ex. 27 at 52-54. The individual did not heed the physician's advice. By June 2006, the individual related that his life consisted of going to work, coming home, sitting in front of the television and drinking beer. Tr. at 94. The individual decided in June 2006 to enter an alcohol treatment facility because he had stopped seeing his grandchildren, stopped doing activities that he enjoyed, and had "lost [his] love of life." *Id.* at 94 and 95. The individual stopped drinking on June 13, 2006 and entered an inpatient treatment center on June 14, 2006. Ex.3 at 2. The individual was discharged from the treatment center on July 7, 2006. *Id.*

## **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).<sup>3</sup> After due deliberation, I have determined that the individual's access authorization should be restored. I find that granting the individual a DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

### **A. The Diagnosis of Alcohol Dependence**

The individual admits that he is an alcoholic although he is unsure about the psychiatric label associated with his condition. Tr. at 90. I find that the overwhelming weight of evidence in the case supports a finding that the individual suffers from Alcohol Dependence. The DOE psychiatrist clearly articulated in his Psychiatric Report and testified convincingly at the hearing why the individual is properly diagnosed as suffering from Alcohol Dependence under the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revised. Ex. 14 at 9-10; Tr. at 136-137. The pivotal question then is whether the individual has presented convincing evidence that he is adequately reformed or rehabilitated from his Alcohol Dependence.

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<sup>3</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

## **B. Rehabilitation and Reformation from Alcohol Dependence**

### **1. The Individual's Testimony and Documentary Evidence**

At the hearing, the individual described the mental transformation that led to his voluntarily seeking alcohol treatment. He first related that it took him five years to realize that alcohol could not kill the pain associated with losing his 20-year old son to cancer. Tr. at 113. He realized that sooner or later he had to “sober up and face the pain.” *Id.* He testified that his son’s illness and death “about killed [him],” and caused him “to lose his drive.” *Id.* at 110-111. He added, “I wasn’t the vibrant person that I’d always been; I’d lost my love of life.” *Id.* at 95.

The individual testified that he realized in June 2006 that he needed to stop drinking in order to enjoy life again. *Id.* at 94-95. Accordingly, he entered an inpatient alcohol treatment center on June 14, 2006. *Id.* at 100. He related that after he left the alcohol treatment center in July 2006, he attended Alcoholics Anonymous (AA) meetings for approximately three to four weeks. *Id.* at 101. He explained that he stopped going to AA because the group consisted of 10 to 12 bikers who used expletives for every other word. *Id.* at 128. He then tried another AA group and found that group to be less “rough” but still crude. *Id.* According to the individual, he did not feel comfortable around the people in the first two AA groups because “that’s not the way [he] was raised.” *Id.* From mid-August until January 2007, the individual continued to abstain from alcohol without the benefit of AA.<sup>4</sup> *Id.* at 103. Sometime in the summer of 2006, the individual started dating the woman whom he would marry in March 2007. *Id.* at 102. According to the individual, his wife kept him from drinking during the time period that he was not attending AA. *Id.* It was his wife who introduced him to another AA group in January 2007. *Id.* at 101. The individual testified that his new AA group consists of members who are “civil and polite” and he feels comfortable among the members of this group. *Id.* at 103, 128. He testified that he attends two to three AA meetings per week and had attended 50 AA meetings as of the hearing date. *Id.* at 103, 93. He provided sign-in sheets from his AA meetings to corroborate his testimony. Ex. D. The individual testified that he has a sponsor and is currently working on Step 5 in the AA program. Tr. at 107. The individual brought the BIG BLUE BOOK and his 12-step book to the hearing and described briefly the content of those two texts. *Id.* at 107. He stated that each night when he comes home from AA, he sits down with his wife and tells her what he learned from the program. *Id.* at 93.

When asked at the hearing how confident he is that he will not resume drinking, he responded, “I’m betting my life on it.” *Id.* at 108. He testified that he is an alcoholic who can never return to social drinking. *Id.* at 90, 129. As for his intentions with regard to AA, the individual stated that he intends to go to AA even if his employer fires him. *Id.* at 93. He explained that he will go to AA until the day that he dies because “staying sober is [his] number one priority in life.” *Id.* at 125. He further explained that he needs to be in AA because it reminds him of what can happen if he were to resume drinking. *Id.* at 114.

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<sup>4</sup> The individual maintained at the hearing that he has the inner resolve to remain abstinent. *Id.* at 97. He analogized his decision to stop drinking with his decision to stop smoking cigarettes. *Id.* He claimed that he used to smoke four to five packs of cigarettes a day and one day he decided to quit and did so without any problem. *Id.*

He also related that having an AA sponsor is very beneficial. *Id.* at 121. He recounted that when he is under stress he goes to his sponsor's place of business to discuss matters with him. *Id.* He added that if something catastrophic were to happen in his life he would supplement AA with counseling. *Id.* at 127.

## **2. The Wife's Testimony**

The individual married his second wife in March 2007. *Id.* at 22. The wife stated that she and the individual started dating in July 2006 and saw each other everyday. *Id.* at 23. She has never seen the individual consume alcohol. *Id.* The individual told her that before he went to the alcohol treatment center his "drinking was out of control." She confirmed that the individual goes to AA approximately three times per week and has a sponsor. *Id.* at 26. Since the individual has been attending AA meetings, his wife has observed that he enjoys life more. *Id.* at 27. He has expressed to his wife that he feels that he has a purpose in life. *Id.* She related that she is recovering from a substance abuse problem and that she and the individual met in the rehabilitation program. *Id.* at 32. She stated that the two support each other in their respective efforts to remain substance-free. *Id.* She testified that they have no alcohol in the house and are careful to ensure that all their over-the-counter products such as mouthwash are alcohol-free. *Id.* at 33.

## **3. The In-Laws' Testimony**

The individual's mother-in-law and father-in-law testified that neither has observed the individual drink alcohol. *Id.* at 77, 85. They first met the individual approximately one year before the hearing. *Id.* at 76. After the individual and their daughter married, the couple lived with them for two to three months. *Id.* at 86. They both know that the individual went to "rehab" for his alcohol-related issues and that he currently attends AA. *Id.* at 81, 87.

## **4. The Co-worker's Testimony**

One of the individual's co-workers testified that everyone at work respects the individual because he is one of the most dedicated and hardest working persons in the department. *Id.* at 50. She related that the individual was diagnosed with cancer and then shortly thereafter the individual's 20-year old son was diagnosed with cancer. *Id.* at 50. She related that she often accompanied the individual to the hospital to see his son. *Id.* She stated that she watched the individual start to deteriorate as his son was dying. *Id.*

According to the co-worker, the individual approached her one day in 2006 and told her that he needed to stop drinking and would do anything that it took to accomplish that goal. *Id.* at 51. He asked for her assistance in navigating the insurance bureaucracy to find a treatment center. *Id.* at 53. He also told her that he "wanted to do the right thing and notify security and his employer's medical department" immediately. She stated that when the individual returned to work after his inpatient treatment, he was extremely proud. *Id.* at 53. She stated that it was uplifting to see how the individual's spirit had grown in a positive way. *Id.* at 54. She related that he became a "light" in the workplace, whistling and singing all the time and simply exuding happiness. *Id.*

She stated that even after the individual's security clearance was suspended and he was moved to another area, he has remained focused and has kept his commitment to himself not to drink. *Id.* at 58. She added that he is a good employee who comes to work earlier than necessary and encourages other employees to do their best work. *Id.* at 62.

## **5. The DOE Psychiatrist's Testimony**

In his Psychiatric Report, the DOE psychiatrist suggested two years of sobriety and one year of participation in AA as adequate evidence of rehabilitation and reformation in this case. After listening to the testimony of all the witnesses in the case, the DOE psychiatrist decided that the individual had demonstrated adequate evidence of rehabilitation from his Alcohol Dependence because the individual had completed an inpatient alcohol treatment program, had been abstinent from alcohol for one year, had attended 50 AA meetings to date, has an AA sponsor, and has convincingly testified that he will remain in AA for the duration of his life and will supplement his AA with alcohol counseling, if necessary. *Id.* In addition, the DOE psychiatrist opined that the individual has a strong support network in his wife, in-laws, and AA sponsor; is "locked into" AA, and has changed his attitude. *Id.* In the end, the DOE psychiatrist expressed confidence that the individual will continue to sustain his abstinence. *Id.* at 146.

## **C. Hearing Officer Evaluation of Evidence**

The evidence in this case convinces me that the individual has mitigated the Criteria H and J security concerns before me. The DOE psychiatrist's opinion that the individual is rehabilitated and reformed from his Alcohol Dependence allays the Criterion H concerns surrounding the state of the individual's mental health. As for Criterion J, it is not only the DOE psychiatrist's opinion regarding the individual's rehabilitation in this case but my own common-sense determination that the individual presented compelling evidence that he has reformed his behavior that allows me to find that the individual has mitigated Criterion J. Specifically, I am convinced from the individual's testimony, and that of his wife and his co-worker that the individual has recognized that he is an alcoholic, has changed his attitude towards drinking, and is committed to maintaining abstinence. I was impressed that the individual decided to seek help for his alcohol problems on his own and to inform DOE security immediately of his decision in this regard. It appears from the record that the individual's own battle with cancer and the loss of his 20-year old son to cancer were the catalysts that propelled the individual into a downward spiral with regard to his excessive, chronic alcohol consumption. The individual's co-worker provided compelling, probative testimony about the transformation that she has observed in the individual, beginning with the individual's son's hospitalization and death and ending with the individual's completion of his inpatient alcohol treatment program. I also found that the individual's wife was uniquely situated to evaluate the individual's drinking habits in light of her own struggle with substance abuse. The wife provided probative evidence that she is a source of strength and support for the individual's continuing efforts to abstain from alcohol in the future. Furthermore, the individual provided corroborating evidence to demonstrate that he abstained from alcohol for a one-year period and is committed to attending AA for the rest of his life. In sum, I find that

the individual has provided adequate evidence that he is rehabilitated and reformed from his Alcohol Dependence.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with both criteria at issue. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date: July 16, 2007